

CARMEN M. LUNA

IBLA 72-351

Decided June 15, 1972

Appeal from the rejection by the New Mexico state office of oil and gas lease offer NM 15323.

Affirmed.

Federal Employees and Officers: Interest in Lands -- Oil and Gas Leases:
Oil and Gas Leases: First Qualified Applicant

Applications --

A simultaneously-filed oil and gas lease offer which gains priority at a public drawing is properly rejected in its entirety when it is discovered that the offer was jointly made by two persons, one of whom is an employee of the Department of the Interior who is prohibited from voluntarily acquiring any interest in the lands or resources administered by the Bureau of Land Management, and although the other joint offeror is apparently a qualified individual, that fact cannot operate either to validate the offer as presented or to require that it be divided so as to separate the interest of the qualified individual from that of the unqualified individual.

APPEARANCES: Carmen M. Luna, pro se.

OPINION BY MR. STUEBING

In the public drawing held on January 10, 1972, in the New Mexico state office, the oil and gas lease offer filed jointly by Carmen M. Luna and Josephine M. Block for lands designated as Parcel No. 63 was the first drawn.

That offer was thereby entitled to priority of adjudication to determine whether it was a qualified offer by qualified applicants. The statute provides that if the lands to be leased are not within any known geologic structure of a producing oil and gas field the person first making application for the oil and gas lease who is qualified to hold a lease shall be entitled to a lease without competitive bidding. (Emphasis supplied.) Act of February 25, 1920, as amended; 30 U.S.C. § 226 (1970).

The Secretary, acting on the authority invested in him by Section 161 of the Revised Statutes (5 U.S.C. § 301 (1970)), has promulgated regulations prohibiting any employee, or the spouse of an employee of the Department of the Interior from voluntarily acquiring an interest in the lands or resources administered by the Bureau of Land Management, subject to certain exceptions not relevant to this case. 43 CFR Part 7 (1972).

Upon adjudication of the Block-Luna lease offer it was ascertained and confirmed that Josephine M. Block was, at the times of the filing, drawing and adjudication of the offer, an employee of the National Park Service, an agency of the Department of the Interior.

By his decision of February 25, 1972, the Chief, Branch of Lands and Minerals Operations, New Mexico state office of the Bureau of Land Management, rejected the offer on the ground that Mrs. Block was an employee of the Department and prohibited from seeking to acquire any interest in the subject lands or their resources, citing 43 CFR 7.3(a)(1).

Carmen M. Luna has appealed from this decision. She asserts first that the regulation cited does not prohibit the Bureau of Land Management from accepting the offer to lease from an employee of the Department of the Interior, but rather prohibits the employee from acquiring an interest in the lands or resources. This argument is so specious that we will not dwell on it. Suffice it to say that it is the duty of the Secretary and those officers of the Bureau of Land Management who exercise his delegated authority to avoid knowingly issuing oil and gas leases to persons not qualified to hold them.

Appellant further contends that it is not a standard operating procedure for the Bureau of Land Management to check the places of employment of successful drawees and states that she would find it interesting to know why this lease was singled out. She appears to infer that some blame should attach to the Bureau for discovering that Mrs. Block was an employee of this Department. This assertion is also unworthy of discussion.

Appellant's final contention is that the lease offer should have been accepted by the Bureau and then Mrs. Block should have been notified of the employee prohibition. She says, "Mrs. Block would then cancel her interest in the lease as provided in 43 CFR 7.8 which states that the violation may be deemed sufficient cause for cancellation of the interest (meaning her interest)." (Emphasis appellant's.) It would then, she continues, be up to the Bureau to award either the full interest in the lease, or at least half, to the appellant.

This latter contention amounts to an argument that the Bureau committed error by refusing to perpetrate a wrong deliberately and then to set about correcting it immediately. This would not have been the correct procedure.

It does not appear that the appellant is in any way disqualified individually. But in the filing of this offer the two individuals engaged in a joint venture, a relationship in which the appellant's interest became inseparable from Mrs. Block's interest. Because of this community of interest, the bar raised by the regulation against the acquisition of an interest by Mrs. Block could not be surmounted separately by the appellant in her individual capacity, and necessitated the rejection of the offer, as presented, in its entirety. See discussion and cases collected in 46 Am. Jr. 2d Joint Ventures; 48 C.J.S. Joint Adventures; 23 Words and Phrases 117. Accordingly, the prohibition against Mrs. Block's acquisition of an interest constituted a prohibition against the acceptance of the offer as presented.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision appealed from is affirmed.

Edward W. Stuebing, Member

We concur:

Newton Frishberg, Chairman

Anne Poindexter Lewis, Member

